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# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 152.

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CITY OF COVINGTON, PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF KENTUCKY.

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IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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FILED AUGUST 20, 1897.

(16,651.)

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(16,651.)

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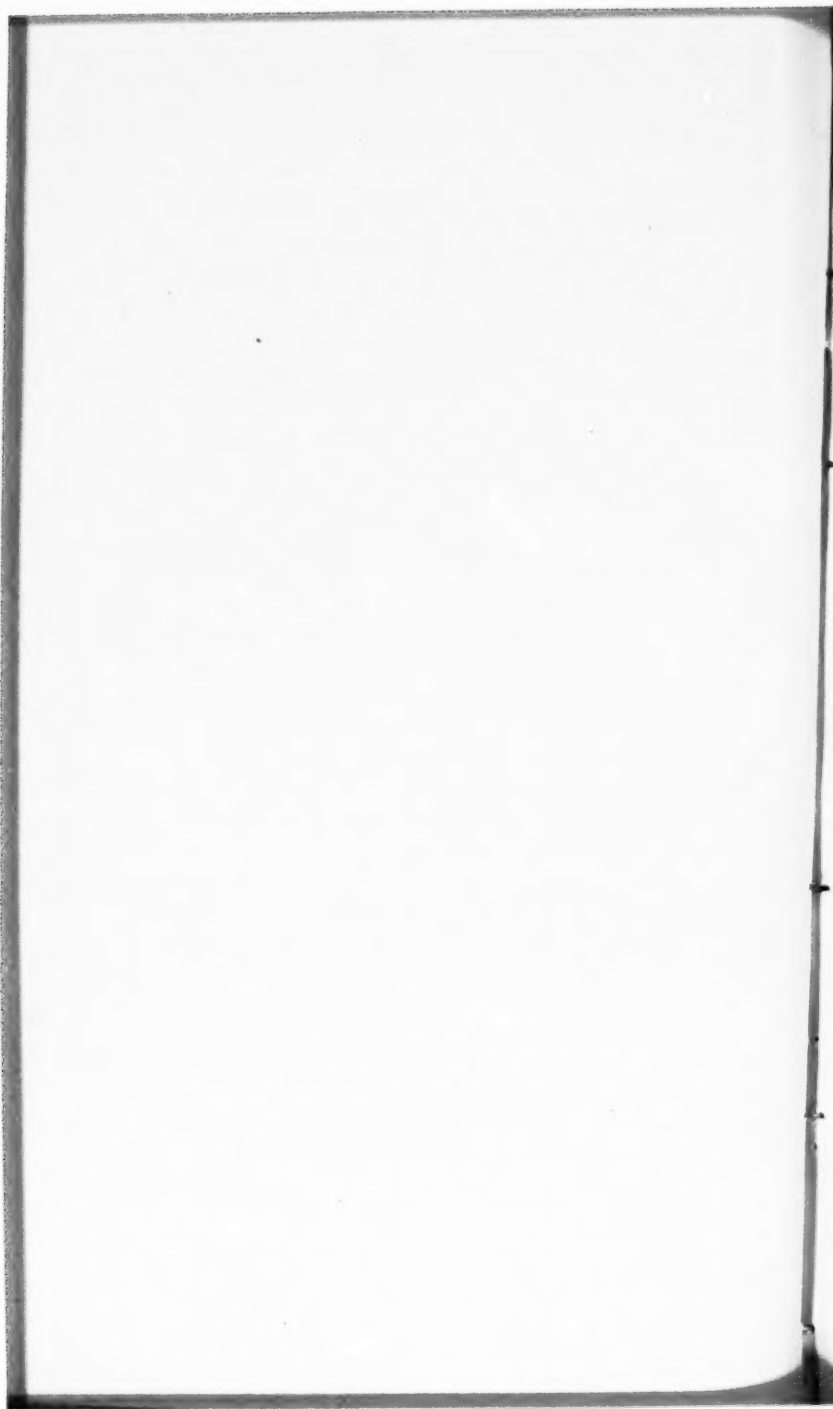
*vs.*

COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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## 1 COMMONWEALTH OF KENTUCKY :

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the 20th day of March, 1897, Chief Justice Joseph H. Lewis, Judges James H. Hazelrigg, Thomas H. Paynter, B. L. D. Guffy, George Du Relle, James D. White, and A. R. Burnam sitting.

CITY OF COVINGTON, Appellant,  
*vs.*  
 COMMONWEALTH OF KENTUCKY, Appellee. }

Be it remembered that heretofore, to wit, on the 6th day of February, A. D. 1897, the appellant, by its counsel, filed in the office of the clerk of the court of appeals a transcript of a record in words and figures following, to wit :

## STATE OF KENTUCKY :

Campbell Circuit Court.

*Pleas.*

2 Pleas before the Honorable C. J. Helm, judge of the Campbell circuit court, at the court-house, in Newport, on the 15th day of January, 1897.

*Style of Suit.*

THE COMMONWEALTH OF KENTUCKY, Plaintiff,  
*vs.*  
 THE TRUSTEES OF THE COVINGTON WATER WORKS, Defendants. }

*Preamble.*

Be it remembered that heretofore, to wit, on the 30th day of March, 1896, the plaintiff, The Commonwealth of Kentucky, by its attorney, filed its petition in the clerk's office of the Campbell circuit court against the defendant, The Trustees of the Covington Water Works, in words and figures as follows, to wit :

*Petition.*

Campbell Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,  
*vs.*  
 THE TRUSTEES OF THE COVINGTON WATER WORKS, Defendant }

Petition in  
 Equity.

The plaintiff, The Commonwealth of Kentucky, says that the general laws of the State require all property which is not exempted

by the general laws of the State to be assessed as of the 15th day of September at its fair cash value, estimated at the price it would bring at a fair voluntary sale, by the assessor of the county, for taxation for State and county purposes.

Plaintiff says that the defendant, The Trustee- of the Covington Water Works, was on the 15th day of September, 1894, the owner and possessor of a piece of real property described as follows, to wit, 49½ acres of land in the Highlands, and personalty.

Plaintiff says that said property is not exempted from taxation, but is directed by law to be taxed, and that the assessor of Campbell county, Kentucky, assessed said property at 332,750 dollars for State and county taxation for the year 1895, which assessment is its fair cash value estimated at the price it would bring at a fair voluntary sale, and that said county assessor made a return of the said assessment to the clerk of the Campbell county court before the 2nd day of January, 1895.

That said clerk of the Campbell county court on the first Monday of January, 1895, delivered the assessment book of the said assessor, containing the assessment of said property, to the board of supervisors of Campbell county.

That said board of supervisors examined said assessment of said property and approved and returned same to the said clerk of the county court, together with their certificate to the said assessor's book containing said assessment.

4 That said clerk of the county court tested the accuracy of the estensions and additions in said assessor's book, as made by the board of supervisors, and made a correct copy of said assessment for the use of the sheriff of Campbell county, in a book kept for that purpose, and delivered to the said sheriff of Campbell county the said book containing said copy of said assessment before the second day of March, 1895.

Plaintiff says that by virtue of the general laws of the State an annual tax of 42½ cents upon each one hundred of value as assessed for taxation, as aforesaid, is collected from each owner for State purposes, and that by virtue of the general laws of the State a tax of 12 cents was levied by the court-house commissioners of said county, for the year 1894, upon each one hundred dollars of value as assessed for taxation as aforesaid, to be collected from each owner for county purposes, and that said sheriff of Campbell county is the collector of the said revenue for the county and State in said county.

Plaintiff says that said taxes upon said property became due upon the first day of March, 1895; that it became delinquent upon the first day of July, 1895; that there was no personalty that the said sheriff could distrain for taxes due, and that upon the 17th day of December, 1895, said taxes being still due and wholly unpaid, the said sheriff did offer said property for sale at the court-house door after

5 having advertised same by posting, for fifteen days before the sale, a written notice at the court-house door and by publication once a week for four weeks prior to the sale in the Kentucky Journal, the said journal being a paper of general circulation in said county, and by sending to defendant a postal card addressed

to their place of residence, notifying them of the time and place of the sale. The said sheriff offered said property for sale as aforesaid, and, no one making any offer or bidding for same, the said sheriff purchased same for the Commonwealth of Kentucky for the sum of \$2,187.24, the said amount being the sum total of the amount of taxes due, cost of advertising, six per cent. commission, and six per cent. penalty, to wit:

	Tax.	6 % penalty.	6 % commission.	Advertising.	Total.
State .....	1,414.19	84.85	89.94	2.00	1,590.98
County .....	531.30	31.88	33.08	.....	596.26

Said penalty, commission, and cost of advertising are added by virtue of the general laws of the State.

Plaintiff says that said sheriff made return of said sale to the clerk of the Campbell county court, and that the attorney for said Campbell county, within fifty days after said sale, notified defendant by sending them a written notice, addressed to their place of residence, that said property had been purchased by the State, and that thirty days have elapsed since said attorney sent said notice and said property has not been redeemed.

Plaintiff says that said property is indivisible, and that defendant is in possession and unlawfully withholding the possession from plaintiff.

6 Wherefore plaintiff prays judgment for the possession of said property and all proper relief.

RAMSEY WASHINGTON,  
County Attorney.

And thereafter, on the 7th day of May, 1896, amended petition was lodged in the following words and figures as follows, to wit:

*Amended Petition.*

Campbell Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,	} Amended Petition.
<i>vs.</i>	
THE TRUSTEES OF THE COVINGTON WATER Works, Defendant.	

By consent of the parties to the above-styled case The City of Covington is made party defendant instead of The Trustees of the Covington Water Works.

RAMSEY WASHINGTON,  
Plaintiff's Attorney.

And thereafter, on the 28th day of September, 1896, demurrer to the petition was lodged in the following words and figures, to wit:

7

*Demurrer.*

Campbell Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,	}	Demurrer to Petition.
<i>vs.</i>		
THE TRUSTEES OF THE COVINGTON WATER WORKS, Defendants.		

Now comes the defendant, The City of Covington, and demurs to the petition herein:

First. Because same does not state facts sufficient to constitute a cause of action.

Second. Because same does not state facts sufficient to support a cause of action.

*Order.*

And at a circuit court on the 5th day of October, 1896, the following order was made in the following words and figures as follows, to wit:

*Def't's Demur. to Pl'ff's Pet'n Noted and Set for Hearing.*

Defendant's demurrer to plaintiff's petition is noted of record, and the same is set for hearing on October 17th, 1896.

*Order.*

And at a circuit court on the 17th day of October, 1896, the following order was made in the following words and figures as follows, to wit:

*Def't's Dem'r to Pl'ff's Pet'n Over'l'd & Def't Excepts.*

Defendant's demurrer to plaintiff's petition is overruled and defendant excepts.

8 And thereafter, on the 2nd day of December, 1896, the following answer was filed in the following words and figures as follows, to wit:

*Answer.*

Campbell Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,	}	Answer.
<i>vs.</i>		
THE CITY OF COVINGTON, Defendant.		

1. The defendant, The City of Covington, says that it is now and has been since March 19, 1894, a city of the second class in the Commonwealth of Kentucky by virtue of "An act for the govern-



ment of cities of the second class in the Commonwealth of Kentucky," approved on said above-mentioned date, and that previous to said date it was a municipal corporation incorporated under an act of the General Assembly entitled "An act to incorporate the city of Covington," approved February 24, 1854, and, for answer herein, admits that on the 15th day of September, 1894, it was the owner of and in possession of the real and personal property described in the petition, and denies that such property is not exempt from taxation, and denies that it is directed by law to be taxed. It denies that the taxes mentioned in the petition became due upon the first day of March, 1895, and denies that they became delinquent on the first day of July, 1895, and denies that said property is indivisible, and denies that it is unlawfully withholding the possession from plaintiff.

- 9        2. For further answer it says that by virtue of an act of the General Assembly of the Commonwealth of Kentucky approved May 1, 1896, "An act to amend the charter of the city of Covington," it was provided, for and on behalf of the city of Covington, the council thereof, in and by the board of trustees hereinafter provided, was authorized and empowered, at a cost to the city not to exceed six hundred thousand (\$600,000.00) dollars and the interest thereon, to build a water reservoir or reservoirs in or out of the corporate limits of the city of Covington and either in Kenton county or in any county adjacent thereto, the approaches thereto, and the connections by pipes or mains with the present water-pipe system of Covington, and to acquire by purchase or condemnation in fee-simple in or out of the corporate limits of Covington and either in Kenton county or in any county adjacent thereto such land or lands as may be necessary for said reservoirs, the approaches thereto, and the connections thereof with the present water-pipe system of Covington; to build a pumping-house and to provide the same with all necessary machinery and appliances for pumping water into said reservoir or reservoirs, the said pumping-house to be located near or adjacent to the Ohio river and the water supplied to the said reservoirs to be taken therefrom, and to acquire, by purchase or condemnation in fee-simple, such land as may be necessary for the site of said pumping-house and the connection thereof by pipes or mains with said reservoir or reservoirs and for all necessary appendages, appurtenances, and roadways, to the end that the city of Covington and the citizens thereof may be provided with
- 10        an ample supply of pure water for all purposes, and to provide the sum of money which the said council by said board of trustees was authorized to expend for the purposes mentioned. Said board of trustees was authorized and empowered to issue and sell in the name and under the corporate seal of the city of Covington on the bonds of said city to an amount not exceeding the sum of six hundred thousand (\$600,000.00) dollars, payable in not more than forty (40) years from and after the date of said bonds, bearing interest at a rate to be fixed by council, not exceeding five (5 %) per cent. per annum. Said bonds were to be denominated "Covington

City bonds," and that they should remain exempt from city taxation.

It further provided how said bonds should be signed and issued. It was provided, however, that said bonds should not be issued and sold without the question of issuing the same and whether the said reservoir or reservoirs should be located above or below the city of Covington should have been first submitted to the qualified voters of Covington at an election to be held for that purpose; and it further provided that if the majority of the votes cast at said election was in favor of issuing said bonds and of the proposed location of said reservoir or reservoirs, then said bonds should be printed and engraved, but not signed, and deposited for safe keeping in one of the banks of the city of Covington, and that they should be signed and issued, as provided, as they should be needed for the purposes in the acts mentioned.

11 It further provided for the appointment of five (5) persons to constitute a board of trustees under the name and style of "the trustees of the Covington reservoir," for and on behalf of the city and of the council thereof, with full power and authority to make and execute all contracts and agreements pertaining to the purchase and condemnation of land for the purposes provided, the selection of the site or sites of said reservoir or reservoirs and pumping-house, the construction of same, the construction or laying of all mains leading to and from same, the equipment of the pumping-house with all proper machinery, and to such other things as were in the act committed to their care, and they and their successors should continue in office until said reservoir or reservoirs, approaches thereto, connections thereof with the pumping-house and with the water-pipe system of Covington, the said pumping-house and machinery therein, were fully completed and in actual operation and for not longer than two (2) months thereafter.

It was further provided that within two (2) months after the completion of said reservoir or reservoirs, pumping-house, connection pipes, and mains and approaches and equipment of the pumping-house with all necessary machinery, the said trustees should make and deliver to the city council a final and complete report in detail of their official acts, and of all receipts and disbursements,

12 and thereupon their powers and duties and term of office shall cease and determine, and the said reservoir or reservoirs, pumping-house, machinery, pipes, mains, and property of every description in the possession of said trustees in connection with or held by said trustees for the purposes of said trust shall be turned over and delivered to the said city of Covington, and thereafter the said reservoir or reservoirs, pumping-house, machinery, pipes, mains, and appurtenances of every description shall be controlled and managed by the commissioner of water works of the city of Covington, and in like manner in all respects by an act entitled "An act to amend the charter of the city of Covington," approved January 31, 1879.

It was further provided in section 31 of said act as follows:

"Said reservoir or reservoirs, pumping-house, machinery, pipes,

mains, and appurtenances, with the land upon which they are situated, shall be and remain forever exempt from State, county, and city taxes."

It was further provided by an act entitled "An act to amend the charter of the city of Covington," approved February 15, 1888, that the trustees were authorized to issue and sell and additional sum of four hundred thousand (\$400,000) dollars' worth of bonds.

It further says that the defendant, in consequence of and relying upon the faith and assurance of the provisions of said act, did  
 13 build water reservoirs out of the corporate limits of the city of Covington in a county adjacent to Kenton county, to wit, Campbell county, Kentucky, and did construct the approaches thereto and the connections thereof by pipes and mains with the then present water system of Covington, and did acquire, by purchase and condemnation in fee-simple in Campbell county, a county adjacent to Kenton county, the lands necessary for said reservoirs and approaches thereto and connections thereof being the land mentioned in plaintiff's petition; that it did build a pumping-house and provide same with necessary machinery and appliances for pumping water into said reservoir, and did acquire land, by purchase and condemnation in fee-simple, necessary for the site of said pumping-house and connection thereof by pipes and mains with said reservoirs, and for all necessary appendages, appurtenances, and roadways, to the end that the city of Covington and the citizens thereof might be provided with an ample supply of pure water for all purposes.

That the question of whether or not the bonds or reservoirs should be located above or below the city of Covington was submitted to the qualified voters of Covington, at an election held for that purpose, and that at said election a majority of the votes cast were in favor of issuing bonds and the location of said reservoirs above the city of Covington, and that thereafter said sum of six hundred thousand (\$600,000.00) — worth of bonds were issued and disposed of in the manner required by said act; that the five (5)

persons were duly appointed and did act as such until said  
 14 works were completed, and that within two (2) months after the completion of said reservoirs, pumping-house, connection pipes and main and approaches, and the equipment of the pumping-house with all necessary machinery, said trustees did make and deliver to the city council of Covington the final and complete report in detail of all their official acts, etc., and that their official powers ceased and the said reservoirs, pumping-house, machinery, pipes, mains, and property of every kind were turned over and delivered to the city of Covington and the same were managed until March 19, 1891, by the commissioners of water works, according to "An act to amend the charter of the city of Covington," approved March 31, 1879, and that since March 19, 1891, said water works, being owned by the city of Covington, are, by virtue of section 38 of article 5 of "An act for the government of cities of the second class in the Commonwealth of Kentucky," approved March 19, 1894, controlled and managed by a board styled "the commissioners of

water works," subject to such regulations and limitations as the general council of Covington may provide; and it is further provided, in section 30 of article 4 of said last-mentioned act, that "the net revenue derived in any city of the second class from its water works shall be applied exclusively to the reimprovement or reconstruction of the streets and other public ways of the city."

It further says that the said trustees did issue and sell four hundred thousand (\$400,000.00) dollars' worth of bonds of the  
15 city of Covington, as provided by the act of February 15, 1888, and the proceeds of same were used in the construction of said water works and appurtenances thereto.

It says that said bonds herein mentioned and the interest thereon are paid from the general revenues of the city of Covington derived from the taxation of the property of the citizens of Covington; that there have been redeemed of said bonds the sum of ninety thousand (\$90,000.00) dollars' worth, and that the remainder of same, with interest at four (4) per cent., are unpaid.

It says that the revenue derived from said water works in excess of the necessary running expenses of same is paid into the treasury of the city of Covington. It says that it has within its corporate limits a Federal building, a court-house and jail, market-houses, school buildings, and other public property.

It says that its said water works is used in furnishing water for the city's fire-plugs and for the fire-hydrants of the city, and for all public buildings in the city free, and it furnishes water to its citizens; that its citizens pay it for the use of the water therefrom.

It further says that its property, as described in the petition, is exempt from taxation by virtue of section 7 170 of the present constitution of the State of Kentucky, which is as follows:

"There shall be exempt from taxation public property used for public purposes," etc.

16 It further says that it is exempt from taxation by virtue of section 4026 of the Kentucky statutes, which provides: "Public property used for public purposes shall be exempt from taxation," etc. It therefore pleads and relies upon said section 170 of the constitution of the State of Kentucky and section 4026 of the Kentucky statutes for the purposes of this exemption.

And it says that the action of the county assessor of Campbell county and of the board of supervisors of Campbell county and of the sheriff of Campbell county, as alleged in the petition, in valuing and attempting to value and assess its said property by virtue of "An act relating to the revenue and taxation," which became a law November 11, 1892, was and is without authority of law and void.

3. It says that property herein mentioned is the property of the defendant, purchased and constructed and held and used by defendant, as particularly set out in the second paragraph of this answer, and that same was purchased and constructed by it, relying upon the provisions of the act of May 1, 1896, and especially of section 31 of said act, which is as follows:

"That said reservoir or reservoirs, pumping-house, machinery,

pipes, mains, and appurtenances, with the land upon which they are situated, shall be and remain forever exempt from State, county and city taxes," and it says that said property was at the time herein mentioned and is now exempt from taxation by virtue of said act, and it now pleads and relies upon said act and the exemption therein contained.

4. It says, for further answer, that it constructed its said water works pursuant to the provisions of said act, being "An act to amend the charter of the city of Covington," approved May 1, 1886, and soon after the passage of said act, and that said water works were constructed by defendant relying upon the faith of said act and by defendant accepting the provisions of said act, and particularly upon section 31 of said act, which is as follows:

"The said reservoir or reservoirs, pumping-house, machinery, pipes, mains and appurtenances, with the land upon which they are situated, shall be and remain forever exempt from State, county and city taxes," and it says that same has never been repealed or amended; and it avers that the action of the county assessor of Campbell county and of the board of supervisors of Campbell county and of the sheriff of Campbell county, as alleged in the petition, in valuing and attempting to value and assess its said property by virtue of "An act relating to the revenue and taxation," which became a law November 11, 1892, was and is without authority of law and void, and that said assessment and attempt to collect said taxes is an attempt to impair the obligation of its contract with the State of Kentucky, hereinbefore set out, and is a violation of section 10 of article 1 of the Constitution of the United States and on section 20, article 12, of the constitution of the State of Kentucky in force at the time said contract was entered into, and also in violation of section 19 of the present constitution of Kentucky, and is void.

Wherefore the defendant, The City of Covington, having fully answered, prays to be dismissed and for a judgment for its costs herein.

W. McD. SHAW,  
*City Solicitor.*

And thereafter, on the 3rd day of December, 1896, general demurrer to answer of defendant was filed in the following words and figures as follows, to wit:

*General Demurrer to Answer.*

Campbell Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,  
vs.  
THE CITY OF COVINGTON, Defendant. } General Demurrer.

The plaintiff says that the answer of the defendant does not state facts sufficient to constitute a defence.

RAMSEY WASHINGTON,  
*Attorney for Plaintiff.*

19

*Order.*

And at a circuit court on the 7th day of December, 1896, the following order was made in the following words and figures as follows, to wit:

*Pl'ff's Dem'r to Def't's Answer Noted and Sub't'd on Dem'r & Set for Hearing.*

Plaintiff's demurrer to defendant's answer is noted of record, and this cause is submitted on said demurrer, and the same is set for hearing December 19th, 1896.

And at a circuit court on the 2nd day of January, 1897, the following order was filed in the following words and figures as follows, to wit:

*Written Order.*

The case of Commonwealth vs. McKibben, 90 Ky., 384, is decisive of this case. The city of Newport sought exemption from taxation under a like exemption, and the court held the act unconstitutional. The demurrer is sustained and defendant has leave to amend. Defendant's counsel waived all other questions and his brief, and the court has consequently given no attention to the regularity of the pleadings.

20

*Order.*

And at a circuit court on the 11th day of January, 1897, the following order was made in the following words and figures as follows, to wit:

*Pl'ff Filed Letter & Moved to Sub't for Judg't & Sub't'd.*

Came plaintiff and filed letter and moved to submit this cause for judgment, and the same is submitted.

*Order.*

And at a circuit court on the 15th day of January, 1897, the following order was made in the following words and figures as follows, to wit:

*Judg't. Appeal Prayed & Granted.*

Counsel inform the court that the only question they want decided by this court is whether the water works of the defendant is liable to State tax. This was decided on demurrer, and the court is now asked to enter a personal judgment from which an appeal may be taken, defendant waiving all other questions. Therefore it is now adjudged that plaintiff is entitled to the possession of forty-nine and  $\frac{1}{2}$  acres of land in the Highland district of Campbell county,

Kentucky, in which is situate the water works of defendant, and a writ of possession is awarded the plaintiff, and defendant excepts and prays an appeal; which is granted.

21 STATE OF KENTUCKY, }  
Campbell County. }

I, A. L. Reuscher, clerk of the Campbell circuit court for the county aforesaid, do hereby certify that the foregoing 21 pages of typewritten matter and this page contain a full, true, and complete transcript of the record and proceedings in the within styled action as the same appears of record and on file in my office.

Witness me hand as clerk this the 4 day of February, 1897.

A. L. REUSCHER, *Clerk.*  
LOUIS REUSCHER, *D. C.*

Upon which transcript was endorsed the following statement:

Judgment appealed from was rendered January 15, 1897 (page 20 of Transcript). No summons:

Afterwards, at a court of appeals begun and held for the Commonwealth of Kentucky, at the capitol, in the city of Frankfort, on the 20th day of February, A. D. 1897, the following order was entered:

22 Campbell.

CITY OF COVINGTON }  
v. }  
COMMONWEALTH. }

The parties, by counsel, filed a transcript and agreement, and on their motion and the court being advised, it is ordered that this cause be advanced and submitted.

(The transcript referred to in foregoing order is copied in this Record from page 1 to page 21.)

Afterwards, at a court of appeals held, as aforesaid, on the 20 day of March, A. D. 1897, the following judgment was entered:

CITY OF COVINGTON, Appellant, }  
vs. } Appeal from Campbell Circuit  
COMMONWEALTH OF KY., Appellee. } Court.

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its costs herein expended.

On the same date the following opinion was delivered:

23 The Commonwealth of Kentucky brought this action to recover possession of a tract of land held and claimed by the city of Covington, upon which had been erected water works. The facts upon which the right of recovery is based are, as stated



in the petition, that the city of Covington having failed to pay the State and county taxes due on said property for 1895 at the assessed value, it was in December, 1895, duly and legally offered for sale by the sheriff, who, no other person bidding, purchased it for the Commonwealth at the price of \$2,189, the sum of taxes unpaid. It is stated in the answer as defense that for reasons set forth said property was exempt from all taxation, and consequently the assessment and sale under which the Commonwealth now claims title and right of possession were illegal and invalid. To that answer a demurrer was sustained and judgment rendered in favor of the Commonwealth for a writ of possession; but, as recited in the judgment, counsel agreed the only question they wished decided was whether the property in question is liable to State taxes. The grounds upon which are based the claim of the city of Covington to exemption of the property from taxation are as follows:

1. That a provision is contained in "An act to amend the charter of the city of Covington," approved May 1, 1886, in these words: "Said reservoir or reservoirs, pumping-house, machinery, pipes, mains, and appurtenances, with the land upon which they are situated, shall be and remain forever exempt from State, county and city taxes." In *City of Louisville v. Com.*, 1 Duv., 295, where the question arose as to exemption from taxation of various articles of property owned by that city, a distinction was expressly recognized

24 between property owned and used for public purposes of a local government or used in carrying on a municipal government and property used not for that purpose, but only for the convenience or profit of its citizens, individually or collectively; and *Com. v. Makibben*, 90 Ky., 384, 14 S. W., 372, where the question was whether the water-works property of the city of Newport was, in pursuance of a special act to that effect, exempt from taxation, it was held not to be so, because not necessary or used to carry on the municipal government as a political power, but held and used merely for the convenience and profit of its citizens. Immediately following that case, in the same volume of Reports, page 515 (14 S. W., 502), is the case of *Clark v. Water Co.*, where the same question arose, and for the same reason it was held that an act exempting from taxation the property of the Louisville Water Company was in violation of the constitution, and, moreover, that the fact that the water supplied by the water company might incidentally protect public buildings of the State and city did not have effect to validate the statute.

2. It is argued that as upon the faith and in pursuance of the special statute of May 1, 1886, the city of Covington, by taxation of the property of its citizens, purchased the land and erected thereon the water works in question at great expense, it has acquired a contract right to the exemption now claimed; but it seems

25 to us, if the General Assembly was without constitutional authority to make the contract, assuming one was made, it is not, nor could be, valid or enforceable. Besides, by a general statute enacted February 14, 1856, and continued in force to the present time, the special act under which the exemption is now



claimed and all others like it were rendered subject to repeal at the will of the General Assembly.

3. And then we come to consider the third ground upon which the exemption is claimed, and that involves the inquiry whether section 170 of the present constitution and the statute passed in pursuance of it operated to repeal or continue in force that part of the special act of May 1, 1886, which exempts said water-works property from taxation. The subject of section 170 is "revenue and taxation," and so much of it as applies to this case is in these words: "There shall be exempt from taxation public property used for public purposes." It was followed by necessary statutory enactments, which, however, could neither curtail nor enlarge exemption from taxation as prescribed by the constitution; and accordingly, in section 4026, St. Ky., adopted for the purpose of carrying out the provisions of section 170, is the identical language we have quoted. As it was manifestly intended by both the constitution and statute to make subject to taxation all property not thereby in express terms exempted, it results that, unless the water-works property of the city of Covington be, in the language or meaning of section 170,

26 "public property used for public purposes," it must be held, like similar property in other cities, subject to taxation, and the special act of May 1, 1886, stands repealed. Assuming, as a reasonable and beneficial rule of construction requires us to do, that the phrase "for public purposes" was intended to be construed and understood according to previous judicial interpretation and usage, there can be no doubt of the proper meaning and application of it, for in the cases cited and others where the question of subjecting particular property of cities to taxation arose the words "for public purposes" had been held by this court to mean in that connection the same as the words "for governmental purposes," and so property used by a city for public or governmental purposes was held to be exempt, while that adapted and used for profit or convenience of the citizens, individually or collectively, was held to be subject to taxation; and, recognizing and applying that distinction, water-works property of a city has been invariably treated by this court as belonging to the latter class, and consequently subject to State and county taxation. In our opinion, the property in question is under the constitution subject to taxation, and the statute enacted in pursuance of it operated to repeal the special act of May 1, 1886.

Judgment affirmed.

27 Afterwards, on the 10th day of July, 1897, the following certificate of Federal questions was filed herein:

It is hereby certified that this case involved the consideration and decision of the following Federal questions:

1st. Whether the act approved May 1st, 1896, entitled An act to amend the charter of the city of Covington in so far as section 31 of said act exempted the water works, pumping-house, machinery, &c., from State, county, and city taxes is or not constitutional.

2nd. Whether or not the levy and sale of the water-works prop-

erty under the tax writ from the State and subjecting it to the payment of State taxes is in violation of paragraph 1, section 10, article 1, of the Constitution of the United States, which prohibits the enactment of laws impairing the obligation of contracts.

3rd. That the act of Nov. 11th, 1892, relating to revenue and taxation, under which the board of supervisors of Campbell county and the sheriff valued or attempted to value and assess the water works for taxation, was void and of no effect and impaired the obligation of the contract between the Commonwealth of Kentucky and the defendant by which the water-works property was exempt from taxation; that the assessment and levy under legislative authority on defendant's property was in direct violation of section 10 of art. 1 of the Constitution of the United States.

All these questions were decided adversely to the defendant, The Water Works Company, and were necessary to the determination of the cause of the Commonwealth of Kentucky against the defendant.

JNO. H. LEWIS,

*Chief Justice Ky. Court of Appeals.*

28 Afterwards, on the 21st day of July, 1897, the plaintiff in error and defendant filed in the clerk's office of the court of appeals an assignment of errors in words and figures following, to wit:

1st. The court of appeals of Kentucky erred in holding that the act of the legislature approved May 1st, 1896, amending the charter of the city of Covington exempting the property of the water works from taxation, was unconstitutional.

2nd. The court erred in holding that the levy and sale of the water-works property to satisfy the taxes claimed by the State of Kentucky was valid.

3rd. The court erred in holding that the board of supervisors of Campbell county, in connection with the sheriff, had the power to value and assess the water-works property for taxation by virtue of the act of Nov'r, 1892.

4th. The trustees claim that the assessment, valuation, levy, and sale of the property of the water-works Co. was void and in violation of the contract between the city of Covington and the State by which the water-works property was exempt from all taxes, State, county, and municipal.

TRUSTEES OF COVINGTON  
WATER WORKS,

By W. S. PRYOR, *Counsel.*

Afterwards, on the — day of —, 1897, the following writ of error was filed in the clerk's office of the court of appeals and herewith returned (a copy being retained in said clerk's office):

29

UNITED STATES OF AMERICA, }  
*District of Kentucky, Sixth Judicial Circuit,* } ss :

The President of the United States to the honorable the judges of the court of appeals of Kentucky, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between The City of Covington, appellant, and Commonwealth of Kentucky, appellee, wherein was drawn in question the validity of the act of 11th November, 1892, by which the board of supervisors of Campbell county and the sheriff undertook to value and assess the property of the water works company for taxation, and also the right of the State, under the statute in relation to revenue and taxation, to levy and assess for taxation the property of the defendant, The Water Works Company, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of said appellant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date of this writ, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected,

30 the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 9th day of August, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-first.

WALTER G. CHAPMAN,  
*Clerk of the Circuit Court of the United States  
 for the District of Kentucky.*

Allowed by—

JOS. H. LEWIS,

*Chief Justice Court of Appeals of Kentucky.*

31

THE COMMONWEALTH OF KENTUCKY, set :

I, Abram Addams, clerk of the Kentucky court of appeals, in compliance with the writ of error herewith returned (a copy of which is on file in my office), hereby certify that the preceding thirty pages

contain a full and complete transcript of the record and proceedings had in said court of appeals in a case wherein The City of Covington is appellant and The Commonwealth of Kentucky is appellee, together with the original writ of error and copies of the certificate of Federal questions and assignment of errors, as the same appear of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 9th day — August, A. D. 1897.

ABRAM ADDAMS,  
*Clerk Kentucky Court of Appeals.*

Fee for this transcript, \$11.50.

32 UNITED STATES OF AMERICA, ss:

To Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Kentucky court of appeals, wherein City of Covington is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph H. Lewis, chief justice of the Kentucky court of appeals, this 9th day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

JOS. H. LEWIS,  
*Chief Justice of the Kentucky Court of Appeals.*

33 On this — day of August, in the year of our Lord one thousand eight hundred and ninety-seven, personally appeared Robert L. Greene before me, the subscriber, S. Hannah Innes, a notary public in and for Franklin county, Kentucky, the said Robert L. Greene being personally well known to me, and makes oath that he on this day delivered a true copy of the within citation to William O. Bradley, governor of the Commonwealth of Kentucky, and also to W. S. Taylor, attorney general of Kentucky.

ROBERT L. GREENE.

Sworn to and subscribed the 13th day of August, A. D. 1897.

[Seal of S. Hannah Innes, Notary Public, Franklin Co., Ky.]

S. HANNAH INNES,  
*N. P., F. Co., Ky.*

Endorsed on cover: Case No. 16,651. Kentucky court of appeals. Term No., 152. City of Covington, plaintiff in error, vs. Commonwealth of Kentucky. Filed August 20th, 1897.